

1 **Title 5, California Code of Regulations**

2 **Division 1, Chapter 11, Subchapter 19**

3 **Facilities for Charter Schools**

4
5 Add Article 3 to read:

6 **Article 3. Facilities for Charter Schools.**

7 **§ 11969.1. Purpose.**

8 This article governs provision of facilities by school districts to charter schools under
9 Education Code section 47614.

10 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
11 Code.

12 **§ 11969.2. Definitions.**

13 (a) Average Daily Classroom Attendance. As used in Education Code section 47614(b),
14 “average daily classroom attendance,” or “classroom ADA,” is average daily attendance (ADA)
15 for classroom-based apportionments as used in Education Code section 47612.5. “In-district
16 classroom ADA” is classroom ADA attributable to in-district students.

17 (b) Operating in the School District. As used in Education Code section 47614(b), a charter
18 school is “operating in the school district” if the charter school meets the requirements of
19 Education Code section 47614(b)(5) regardless of whether the school district is or is proposed to
20 be the authorizing entity for the charter school and whether the charter school has a facility
21 inside the school district's boundaries.

22 (c) In-district Students. As used in Education Code section 47614(b), a student attending a

1 charter school is an “in-district student” of a school district if he or she is entitled to attend the
2 schools of the school district and could attend a school district-operated school, except that a
3 student eligible to attend the schools of the school district based on interdistrict attendance
4 pursuant to Education Code section 46600 et seq. or based on parental employment pursuant to
5 Education Code section 48204(f) shall be considered a student of the school district where he or
6 she resides.

7 (d) Contiguous. As used in Education Code section 47614(b), facilities are “contiguous” if
8 they are contained on the school site or immediately adjacent to the school site. If the in-district
9 average daily classroom attendance of the charter school cannot be accommodated on any single
10 school district school site, contiguous facilities also includes facilities located at more than one
11 site, provided that the school district shall minimize the number of sites assigned and shall
12 consider student safety.

13 (e) Furnished and Equipped. As used in Education Code section 47614(b), a facility is
14 “furnished and equipped” if it includes all the furnishings and equipment necessary to conduct
15 classroom-based instruction (i.e., at a minimum, desks, chairs, and blackboards).

16 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
17 Code.

18 **§ 11969.3. Conditions Reasonably Equivalent.**

19 The following provisions shall be used to determine whether facilities provided to a charter
20 school are sufficient to accommodate charter school students in conditions reasonably equivalent
21 to those in which the students would be accommodated if they were attending public schools of
22 the school district providing facilities, as required by Education Code section 47614(b).

1 (a) Comparison Group.

2 (1) The standard for determining whether facilities are sufficient to accommodate charter
3 school students in conditions reasonably equivalent to those in which the students would be
4 accommodated if they were attending public schools of the school district providing facilities
5 shall be a comparison group of school district-operated schools with similar grade levels.

6 (2) The comparison group shall be the school district-operated schools with similar grade
7 levels that serve students living in the high school attendance area, as defined in Education Code
8 section 17070.15(b), in which the largest number of students of the charter school reside. The
9 number of charter school students residing in a high school attendance area shall be determined
10 using in-district classroom ADA projected for the fiscal year for which facilities are requested.

11 (3) For school districts whose students do not attend high school based on attendance areas,
12 the comparison group shall be three schools in the school district with similar grade levels that
13 the largest number of students of the charter school would otherwise attend. For school districts
14 with fewer than three schools with similar grade levels, the comparison group shall be all schools
15 in the school district with similar grade levels.

16 (b) Capacity.

17 (1) Facilities made available by a school district to a charter school shall be provided in the
18 same ratio of teaching stations to ADA as those provided to students in the school district
19 attending comparison group schools. School district ADA shall be determined using projections
20 for the fiscal year and grade levels for which facilities are requested. Charter school ADA shall
21 be determined using in-district classroom ADA projected for the fiscal year and grade levels for
22 which facilities are requested. The number of teaching stations shall be determined using the

1 classroom inventory prepared pursuant to Section 1859.30 of Title 2 of the California Code of
2 Regulations, adjusted to exclude classrooms identified as interim housing portables.

3 (2) If the school district includes specialized classroom space, such as science laboratories, in
4 its classroom inventory, the space allocation provided pursuant to subdivision (1) shall include a
5 share of the specialized classroom space. The amount of specialized classroom space allocated
6 shall be determined based on the grade levels of charter school students and shall be
7 commensurate with the in-district classroom ADA of the charter school.

8 (3) School districts shall provide access to non-teaching station space commensurate with the
9 in-district classroom ADA of the charter school. Non-teaching station space is all of the space
10 that is not identified as teaching station space and includes, but is not limited to, administrative
11 space, kitchen, multi-purpose room, and play area space.

12 (4) Space allocated to a charter school may be shared with school district-operated programs.
13 Sharing arrangements may involve use of a space by a charter school and a school district-
14 operated program at the same time or at different times.

15 (c) Condition.

16 (1) All of the factors listed below shall be used by the school district and charter school to
17 determine whether the condition of facilities provided to a charter school is reasonably
18 equivalent to the condition of comparison group schools.

19 (A) School site size.

20 (B) The condition of interior and exterior surfaces.

21 (C) The condition of mechanical, plumbing, electrical, and fire alarm systems.

22 (D) The conformity of mechanical, plumbing, electrical, and fire alarm systems to applicable

1 codes.

2 (E) The availability and condition of technology infrastructure.

3 (F) The suitability of the facility as a learning environment including, but not limited to,
4 lighting, noise mitigation, and size for intended use.

5 (G) The manner in which the facility is furnished and equipped.

6 (2) Notwithstanding subdivision (1), at charter schools established through the conversion
7 from an existing public school as described in Education Code section 47605(a)(2), the condition
8 of the facility previously used by the school district at the conversion site shall be considered to
9 be reasonably equivalent to the condition of school district facilities for the first year the charter
10 school uses the facility.

11 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
12 Code.

13 **§ 11969.4. Operations and Maintenance.**

14 (a) Facilities and furnishings and equipment provided to a charter school by a school district
15 shall remain the property of the school district.

16 (b) The ongoing operations and maintenance of facilities and furnishings and equipment is
17 the responsibility of the charter school. Projects eligible to be included in the school district
18 deferred maintenance plan established pursuant to Education Code section 17582 and the
19 replacement of furnishings and equipment supplied by the school district in accordance with
20 school district schedules and practices, shall remain the responsibility of the school district. The
21 school district may require that the charter school comply with school district policies regarding
22 the operations and maintenance of the school facility and furnishings and equipment. However,

1 school districts may not require charter schools to comply with policies in cases where actual
2 school district practice substantially differs from official policies.

3 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
4 Code.

5 **§ 11969.5. Availability.**

6 The space allocated for use by the charter school, subject to sharing arrangements, shall be
7 available for the charter school's entire school year regardless of the school district's
8 instructional year or class schedule and may not be sublet or used for purposes other than those
9 that are consistent with school district policies and practices for use of other public schools of the
10 school district without permission of the school district.

11 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
12 Code.

13 **§ 11969.6 Location.**

14 A school district may satisfy the requirements of Education Code section 47614 by providing
15 facilities that are located outside the school district's boundaries, subject to other provisions of
16 this article. No school district is required to provide facilities that are located outside the school
17 district's boundaries to a charter school.

18 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
19 Code.

20 **§ 11969.7. Charges for Facilities Costs.**

21 The school district may charge the charter school a pro rata share of its facilities costs for the
22 use of the facilities. The pro rata share amount shall not exceed (1) a per-square-foot amount

1 equal to those school district facilities costs that the school district pays for with unrestricted
2 general fund revenues, as described on pages 203-1 and 305-1 of Part I of the 2001 edition of the
3 California School Accounting Manual (at www.cde.ca.gov/fiscal/sacs/csam), divided by the total
4 space of the school district times (2) the amount of space allocated by the school district to the
5 charter school.

6 (a) For purposes of this section, facilities costs includes those costs associated with facilities
7 acquisition and construction and facilities rents and leases, as defined on page 81 of Part II of the
8 2001 edition of the California School Accounting Manual (at www.cde.ca.gov/fiscal/sacs/csam).

9 For purposes of this section, facilities costs also includes the contribution from unrestricted
10 general fund revenues to the school district deferred maintenance fund, costs from unrestricted
11 general fund revenues for projects eligible for funding but not funded from the deferred
12 maintenance fund, and costs from unrestricted general fund revenue for replacement of
13 furnishings and equipment according to school district schedules and practices.

14 (b) For purposes of this section, the cost of facilities shall include debt service costs.

15 (c) "Space allocated by the school district to the charter school" shall include a portion of
16 shared space where a charter school shares a campus with a school district-operated program.
17 Shared space may include but is not limited to those facilities needed for the overall operation of
18 the campus, whether or not used by students. The portion of the shared space to be included in
19 the "space allocated by the school district to the charter school" shall be calculated based on the
20 amount of space allocated for the exclusive use of the charter school compared to the amount of
21 space allocated to the exclusive use of the school-district-operated program.

22 (d) The per-square-foot charge shall be determined using actual facilities costs in the year

1 preceding the fiscal year in which facilities are provided and the largest amount of total space of
2 the school district at any time during the year preceding the fiscal year in which facilities are
3 provided.

4 (e) The per-square-foot charge shall be applied equally by the school district to all charter
5 schools that receive facilities under this article.

6 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
7 Code.

8 **§ 11969.8. Reimbursement Rates for Over-allocated Space.**

9 (a) Space is considered to be over-allocated if (1) the charter school's actual in-district
10 classroom ADA is less than the projected in-district classroom ADA upon which the facility
11 allocation was based and (2) the difference is greater than or equal to a threshold ADA amount
12 of 25 ADA or 10 percent of projected in-district classroom ADA, whichever is greater. The per-
13 pupil rate for over-allocated space shall be equal to the statewide average cost avoided per pupil
14 set pursuant to Education Code section 42263. The reimbursement amount owed by the charter
15 school for over-allocated space shall be equal to (1) this rate times the difference between the
16 charter school's actual in-district classroom ADA and the projected in-district classroom ADA
17 upon which the facility allocation was based, less (2) this rate times one-half the threshold ADA.
18 For purposes of this subdivision, the actual in-district classroom ADA shall be determined using
19 the report submitted pursuant to Section 11969.9(i) in conjunction with the second principal
20 apportionment under Education Code section 41601.

21 (b) A charter school must notify the school district when it anticipates that it will have over-
22 allocated space that could be used by the school district. Upon notification by a charter school

1 that the charter school anticipates having over-allocated space, a school district may elect to use
2 the space for school district programs. The school district must notify the charter school whether
3 or not it intends to use the over-allocated space within 30 days of the notification by the charter
4 school. If the school district notifies the charter school that it intends to use all or a portion of the
5 over-allocated space, payments for over-allocated space and pro rata share payments shall be
6 reduced accordingly beginning at the time of the school district notification to use the space. If
7 the school district notifies the charter school that it does not intend to use the space, the charter
8 school must continue to make payments for over-allocated space and pro rata share payments.
9 The school district may, at its sole discretion, reduce the amounts owed by the charter school.
10 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
11 Code.

12 **§ 11969.9. Procedures and Timelines for the Request for, Reimbursement for, and**
13 **Provision of, Facilities.**

14 (a) A charter school must be operating in the school district as defined in Education Code
15 section 47614 before it submits a request for facilities. A new or proposed new charter school is
16 eligible to request facilities for a particular fiscal year only if it submitted its charter petition to a
17 local education agency pursuant to Education Code section 47605 before November 15 of the
18 fiscal year preceding the year for which facilities are requested. A new charter school is entitled
19 to receive facilities only if it received approval of the petition before March 1 of the fiscal year
20 preceding the year for which facilities are requested.

21 (b) To receive facilities during a particular fiscal year, a charter school must submit a written
22 facilities request to the school district by October 1 of the preceding fiscal year. However, a new

1 charter school, defined as a charter school that did not receive funds pursuant to Education Code
2 section 47633 in the fiscal year preceding the fiscal year for which facilities are requested, must
3 submit its written facilities request before January 1 of the preceding fiscal year. In the absence
4 of a successful local school bond measure, a charter school making a request for facilities under
5 this article in compliance with the procedures and timelines established in this section shall be
6 entitled to receive facilities beginning on November 8, 2003.

7 (c)(1) The written facilities request must include:

8 (A) reasonable projections of in-district and total ADA and in-district and total classroom
9 ADA;

10 (B) a description of the methodology for the projections;

11 (C) if relevant, documentation of the number of in-district students meaningfully interested in
12 attending the charter school;

13 (D) the charter school's instructional calendar;

14 (E) information regarding the general geographic area in which the charter school wishes to
15 locate; and

16 (F) information on the charter school's educational program that is relevant to assignment of
17 facilities.

18 (2) Projections of in-district ADA, in-district classroom ADA, and the number of in-district
19 students shall be broken down by grade level and by the school in the school district that the
20 student would otherwise attend.

21 (3) School districts may require the charter school to submit its facilities request containing
22 the information specified in subdivisions (c)(1) and (2) on a form available from the California

1 Department of Education and developed in consultation with the Advisory Commission on
2 Charter Schools or another form specified by the school district. School districts may also
3 require the charter school either to distribute a reasonable number of copies of the written
4 facilities request for review by other interested parties, such as parents and teachers, or to
5 otherwise make the request available for review.

6 (d) The school district shall review the projections and provide the charter school a
7 reasonable opportunity to respond to any concerns raised by the school district regarding the
8 projections. The school district shall prepare a preliminary proposal regarding the space to be
9 allocated to the charter school and the associated pro rata share amount and provide the charter
10 school a reasonable opportunity to review and comment on the proposal.

11 (e) The school district must provide a final notification of the space offered to the charter
12 school by April 1 preceding the fiscal year for which facilities are requested. The school district
13 notification must specifically identify:

14 (1) the teaching station and non-teaching station space offered for the exclusive use of the
15 charter school and the teaching station and non-teaching station space to be shared with district-
16 operated programs;

17 (2) for shared space, the arrangements for sharing;

18 (3) the in-district classroom ADA assumptions for the charter school upon which the
19 allocation is based and, if the assumptions are different than those submitted by the charter
20 school, a written explanation of the reasons for the differences;

21 (4) the pro rata share amount; and

22 (5) the payment schedule for the pro rata share amount, which shall take into account the

1 timing of revenues from the state and from local property taxes.

2 (f) The charter school must notify the school district in writing whether or not it intends to
3 occupy the offered space. This notification must occur by May 1 or 30 days after the school
4 district notification, whichever is later. The charter school's notification can be withdrawn or
5 modified before this deadline. After the deadline, if the charter school has notified the school
6 district that it intends to occupy the offered space, the charter school is committed to paying the
7 pro rata share amount as identified. If the charter school does not notify the school district by this
8 deadline that it intends to occupy the offered space, then the space shall remain available for
9 school district programs and the charter school shall not be entitled to use facilities of the school
10 district in the following fiscal year.

11 (g) The space allocated by the school district must be furnished, equipped and available for
12 occupancy by the charter school at least seven days prior to the first day of instruction of the
13 charter school.

14 (h) The school district and the charter school shall negotiate an agreement regarding use of
15 and payment for the space. The agreement shall contain at a minimum, the information included
16 in the notification provided by the school district to the charter school pursuant to subdivision

17 (e). In addition, if required by the school district, the agreement shall provide that the charter
18 school shall:

19 (1) Maintain liability insurance naming the school district as an additional insured to
20 indemnify the school district for damage and losses for which the charter school is liable; and/or

21 (2) Comply with school district policies regarding the operations and maintenance of the
22 school facility and furnishings and equipment.

1 (i) The charter school must report actual ADA to the school district every time that the
2 charter school reports ADA for apportionment purposes. The reports must include in-district and
3 total ADA and in-district and total classroom ADA. The charter school must maintain records
4 documenting the data contained in the reports. These records shall be available on request by the
5 school district.

6 (j) The charter school and the school district may negotiate separate agreements and/or
7 reimbursement arrangements for specific services not considered part of facilities costs as
8 defined in Section 11969.7. Such services may include, but are not limited to, the use of
9 additional space and operations, maintenance, and security services.

10 (k) Notwithstanding any of the other provisions of this section, a charter school and the
11 school district may mutually establish different timelines and procedures than provided in this
12 section. A school district may establish timelines as much as two months earlier than provided
13 in this section provided that (1) it notify charter schools of the changes, (2) it does not change the
14 dates for submission of facility requests, and (3) charter schools have the same amount of time to
15 respond to the school district's offer of space.

16 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education
17 Code.